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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re J.B., a Person Coming Under the  
Juvenile Court Law.

LAKE COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Respondent,

v.

J.B.,

Appellant.

A143883

(Lake County  
Super. Ct. No. JV-320349B)

J.B., born in March 2007 and the son of C.D. (Mother), appeals from an order granting Mother's Welfare and Institutions Code section 388<sup>1</sup> petition to order that he be returned to Mother and Ja.B. (Father)'s home. The Lake County Department of Social Services (Department) has moved to dismiss the appeal as moot. We grant the motion.

**BACKGROUND**

J.B. has cerebral palsy. He was detained in November 2012 after he was left in the care of his 12-year-old brother, found lying on a vomit-soaked blanket, taken to the hospital, and treated for dehydration. By the time of the hearing on the section 388 petition, he had lived for two years with a foster mother who had considerable experience caring for special needs children and wanted to adopt him.

<sup>1</sup> Further statutory references are to this Code.

At an 18-month review hearing in June 2014, the court terminated reunification services, and set a section 366.26 hearing for J.B. The section 388 petition was filed a week before the scheduled section 366.26 hearing. The petition was granted at a hearing in December.

The Department has moved to dismiss the appeal as moot because Mother's and Father's parental rights to J.B. were terminated by an order filed on June 29. We grant the Department's request for judicial notice of the order.

### DISCUSSION

In a letter dated May 21, 2015, J.B. opposes the motion to dismiss. J.B. does not dispute that the appeal is moot, but argues that we should exercise our discretion to decide the appeal because it involves "an issue of broad public interest that is likely to recur . . . ." (*In re William M.* (1970) 3 Cal.3d 16, 23.) The alleged matter of broad public interest is whether *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532 (*Kimberly F.*), "sets the standard for deciding [the child's] best interest in ruling on a section 388 petition."

In his opening brief, J.B. argues that the court failed to properly apply *Kimberly F.* when it granted the section 388 petition. J.B. contends: "According to the *Kimberly F.* opinion, in ruling on a section 388 petition, the trial court should consider: (1) the seriousness of the reason for the dependency, (2) the relative strength of the existing bond between the minor and parent versus the minor and caregiver, and (3) the degree to which the initial problem has been addressed. [Citation.] [¶] . . . A review of the three *Kimberly F.* factors . . . demonstrates that mother failed to establish best interest according to the *Kimberly F.* model." J.B. further contends that the court failed to consider his need for permanence and stability. (See *In re J.C.* (2014) 226 Cal.App.4th 503, 526–527 (*J.C.*) [holding that "after reunification services have terminated, a parent's petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child's need for permanency and stability"; declining to apply the *Kimberly F.* factors because they do not take this consideration into account].)

No case law was mentioned in Mother’s section 388 petition, the Department’s opposition to the petition, or the arguments at the hearing on the petition. Nor did the court’s ruling refer to any cases, or standards apart from the burden of proof, it used when it determined that granting the petition would be in J.B.’s best interest. The court simply stated: “This is a difficult and close call to make. The court does use the preponderance of the evidence standard in making this determination, and I find that the mother has met her burden. And I’ll make an order that [J.B.] be returned home . . . .”

Thus, insofar as it appears from the record, the court may have applied the *Kimberly F.* factors and simply reached what J.B. considers to be the wrong result. Moreover, the *J.C.* case and J.B.’s brief cast doubt on the sufficiency of the *Kimberly F.* factors where, as here, a change in placement is sought after reunification services have been terminated. J.B.’s arguments for reaching the merits of this moot appeal are that *Kimberly F.* is controlling, and there is a broad public interest in the court’s failure to apply that case here. The record and briefing in this case are inconclusive on whether the juvenile court considered or applied *Kimberly F.*

#### DISPOSITION

The appeal is dismissed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.